

Application No. 10/676,131

Docket No.: 14519-00003-US

**REMARKS**

The Office Action mailed July 27, 2007 has been carefully considered and this response prepared.

Claims 34-44 are pending in the application.

Claims 34 and 39 have been amended to state that A is a 3-9 carbon moiety selected from the group consisting of alkylene radical, alkenylene radical, and hydroxyalkylene radical, wherein A includes a straight chain of at least two carbon atoms between the nitrogen atom and the phosphorus atom of general formula (I). Support for the amendments to claims 34 and 39 can be found through out the specification and in particular at page 9, lines 21-29 and page 4, lines 16-17.

Claim 35 has been canceled without prejudice and replaced with new independent claim 45, which is directed to a method for preparing a pharmaceutical composition. Support for new claim 45 can be found in claims 34 and 35, and in the specification at page 4. Claim 36 was amended to depend from claim 45 instead of canceled claim 35.

Claim 40 has been canceled without prejudice and replaced with new independent claim 46 which is directed to a method of treating a subject susceptible to infection by an infectious agent. Support for new claim 46 can be found in claims 39 and 40, and in the specification at page 4. Claim 41 was amended to depend from claim 46 instead of canceled claim 40.

No new matter has been added.

**Rejection under 35 USC 101**

At page 2 of the Office Action, claims 34-38 were rejected under 35 USC 101 because the claims do not set out steps involved in the process and are therefore improper claims.

Applicant traverses this rejection. In Applicant's response to the previous Office Action, claim 34 was amended to recite the step of mixing a therapeutically effective amount of a compound of Formula I, as defined in the claim, a tautomer, ester or amide of the compound or a pharmaceutically acceptable salt of the compound, tautomer, ester or amide, with a pharmaceutically acceptable excipient. Claim 38 depends from claim 34 and is also amended by the amendment to claim 34. Claim 35 has been canceled without prejudice and replaced with

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new independent claim 45 which includes a mixing step. Claims 36-37 depend from claim 45. Withdrawal of this section 101 rejection is respectfully requested.

**Rejection under 35 USC 112, second paragraph**

At page 2 of the Office Action, claims 34-38 were rejected under 35 USC 112, second paragraph because the claims do not set forth steps involved in the process and are therefore indefinite.

Applicant traverses this rejection. As discussed above, in Applicant's response to the previous Office Action, claim 34 was amended to recite the step of mixing a therapeutically effective amount of a compound of Formula I, as defined in the claim, a tautomer, ester or amide of the compound or a pharmaceutically acceptable salt of the compound, tautomer, ester or amide, with a pharmaceutically acceptable excipient. Claim 38 depends from claim 34 and is also amended by the amendment to claim 34. Claim 35 has been canceled without prejudice and replaced with new independent claim 45 which includes a mixing step. Claims 36-37 depend from claim 45. Withdrawal of this section 112, second paragraph rejection is respectfully requested.

**Double Patenting Rejection**

At page 3 of the Office Action, the Examiner rejected claims 34-44 on the grounds of non-statutory obviousness-type double patenting over claims 1-16 of U.S. Patent 6,680,308. The Examiner stated that, although the conflicting claims are not identical, they are not patentably distinct from each other because the '308 patent recites the same compounds for a method of treating essentially the same infectious diseases.

Applicant requests that this rejection be held until such time as notice of patentable subject matter has been received in the present application. Applicants will file an appropriate terminal disclaimer at that time if necessary.

**Rejection under 35 USC 102(b)**

At page 4 of the Office Action, the Examiner rejected claims 34-44 under 35 USC 102(b) as anticipated by Kerst, U.S. Patent 3,887,353. The Examiner indicated that Kerst teaches that

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diethyl beta-aminoethylphosphonate is a broad spectrum antimicrobial which can be used in a method to inhibit the growth of a variety of microorganisms on plants and also suggests that the compound may have activity against other pathogens. The Examiner also indicated in the Office Action at page 4, just prior to the present rejection, that the term "subject" was construed as any living organism.

Applicants traverse this rejection.

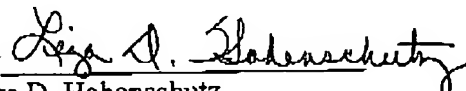
Kerst, U.S. Patent 3,887,353 discloses the use of diethyl betaaminoethylphosphonate to inhibit and/or prevent the growth of undesirable algae, bacteria, fungi, yeast, and other microorganisms in agricultural, animal husbandry, and pharmacological applications and water treatment technology.

Claims 34, 36-39 and 41-44, as amended, and new claims 45-46 are directed to methods of preparing a pharmaceutical composition or treating a subject susceptible to infection by an infectious agent using compounds of Formula I, as defined in the claims, which compounds of Formula I do not include diethyl betaaminoethylphosphonate. Kerst therefore does not anticipate claims 34, 36-39 or 41-44, as amended, or new claims 45-46. Withdrawal of this section 102(b) rejection is respectfully requested.

In view of the above, the present application is believed to be in a condition ready for allowance. Reconsideration of the application is respectfully requested and an early Notice of Allowance is earnestly solicited.

Respectfully submitted,

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